

Brown v. Board of Education (1954, 1955)

Focus Question:

How has the government attempted to remedy the de facto and de jure school segregation?

Taken from: <http://www.uscourts.gov/educational-resources/educational-activities/history-brown-v-board-education-re-enactment>

Background: The state of the union when the *Brown* decision came down.

In 1954, 17 U.S. states mandated segregation. These laws affected about 9 million white children and 2.3 million black children in public schools.

The case that came to be known as *Brown v. Board of Education* was actually the name given to five separate cases that were heard by the U.S. Supreme Court concerning the issue of segregation in public schools. These cases were *Brown v. Board of Education of Topeka*, *Briggs v. Elliot*, *Davis v. Board of Education of Prince Edward County (VA.)*, *Boiling v. Sharpe*, and *Gebhart v. Ethel*. While the facts of each case are different, the main issue in each was the constitutionality of state-sponsored segregation in public schools. Once again, Thurgood Marshall and the NAACP Legal Defense and Education Fund handled these cases.

Although it acknowledged some of the plaintiffs'/plaintiffs claims, a three-judge panel at the U.S. District Court that heard the cases ruled in favor of the school boards. The plaintiffs then appealed to the U.S. Supreme Court.

When the cases came before the Supreme Court in 1952, the Court consolidated all five cases under the name of *Brown v. Board of Education*. Marshall personally argued the case before the Court. Although he raised a variety of legal issues on appeal, the most common one was that separate school systems for blacks and whites were inherently unequal, and thus violate the "equal protection clause" of the Fourteenth Amendment to the U.S. Constitution. Furthermore, relying on sociological tests, such as the one performed by social scientist Kenneth Clark, and other data, he also argued that segregated school systems had a tendency to make black children feel inferior to white children, and thus such a system should not be legally permissible.

Meeting to decide the case, the Justices of the Supreme Court realized that they were deeply divided over the issues raised. While most wanted to reverse *Plessy* and declare segregation in public schools to be unconstitutional, they had various reasons for doing so. Unable to come to a solution by June 1953 (the end of the Court's 1952-1953 term), the Court decided to rehear the case in December 1953. During the

intervening months, however, Chief Justice Fred Vinson died and was replaced by Gov. Earl Warren of California. After the case was reheard in 1953, Chief Justice Warren was able to do something that his predecessor had not—i.e. bring all of the Justices to agree to support a unanimous decision declaring segregation in public schools unconstitutional. On May 14, 1954, he delivered the opinion of the Court, stating that "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. . ."

Expecting opposition to its ruling, especially in the southern states, the Supreme Court did not immediately try to give direction for the implementation of its ruling. Rather, it asked the attorney generals of all states with laws permitting segregation in their public schools to submit plans for how to proceed with desegregation. After still more hearings before the Court concerning the matter of desegregation, on May 31, 1955, the Justices handed down a plan for how it was to proceed; desegregation was to proceed with "all deliberate speed." Although it would be many years before all segregated school systems were to be desegregated, *Brown* and *Brown II* (as the Courts plan for how to desegregate schools came to be called) were responsible for getting the process underway.

'Sleepwalking back to *Plessy*'

Taken from:

<http://www.tolerance.org/magazine/number-25-spring-2004/department/brown-v-board-american-legacy>

The passage of the Civil Rights Act of 1964 finally gave some teeth to *Brown*. That act, supported by the executive branch, empowered the federal government to cut funding to schools that continued to segregate their students and gave the U.S. Department of Justice authority to file lawsuits seeking desegregation of schools.

As Supreme Court Justice Hugo Black wrote at the time, "There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which we held in *Brown*."

But even then, integration was fought in a variety of ways. Using the fact that, legally speaking, Mexican Americans were considered "white," schools in Texas and other states

created "integrated" schools of Mexican Americans and Blacks, leaving all-white schools unchanged.

It wasn't until 1971 that widespread integration began. That's when a North Carolina case — *Swann v. Charlotte-Mecklenburg Board of Education* — allowed school systems to bus students as a way of integrating schools in segregated neighborhoods. Busing remains a volatile issue, but this decision is the one that prompted the highest levels of integration.

The number of black students attending majority-white schools in the South rose from 2% in the mid-1960s to nearly 45% in the late 1980s, the peak of school integration.

But success brought other changes. The mid-1980s also saw the first lifting of federal court sanctions, allowing schools to return to racial segregation. By 1991, integration levels had returned to pre-1971 levels.

Gary Orfield of Harvard University's Civil Rights Project put it this way: "We are, in essence, sleepwalking back to *Plessy*."

The 1970s through the 1990s also spotlighted new forms of segregation, fueled by a history of so-called "white flight" from cities to suburbs, particularly in the North and Midwest. By the opening of the 21st century, the nation's most segregated public schools were found not in the South but in Illinois, New York and New Jersey.

There, and in other areas across the country, black and Latino students live in segregated, urban neighborhoods and attend overcrowded, under-funded, low-achieving schools, while most of their white counterparts attend affluent, nearly all-white schools in suburban America.

Separate and unequal continues: More than 80% of black and Latino segregated schools are in high-poverty areas, compared with 5% of segregated white schools.

Today, the arguments are about affirmative action and the disparities created by the use of property taxes to fund schools. Just last year, the Supreme Court offered a split decision on affirmative action admissions to college, upholding race-based admissions at the University

of Michigan's Law School but striking down a similar process used for Michigan's undergraduates.